

Law enforcement (section 31)

Freedom of Information Act

Contents

Introduction.....	2
Overview.....	2
What FOIA says	3
Sections 30 and 31.....	6
The prejudice test	7
Sections 31(1)(a) – (f) – general law enforcement activities.....	8
Section 31(1)(a) the prevention or detection of crime	8
Mosaic and precedent effects	9
Section 31(1)(b) the apprehension or prosecution of offenders..	10
Section 31(1)(c) the administration of justice.....	10
Section 31(1)(d) the assessment or collection of any tax or duty or any imposition of a similar nature	12
Section 31(1)(e) the operation of immigration controls	13
Section 31(1)(f) the maintenance of security and good order in prisons or other institutions where persons are lawfully detained	
.....	14
Sections 31(1)(g) – (i) – the exemptions by reference to section 31(2).....	14
Section 31(1)(g).....	15
Functions for a specified purpose.....	15
For the purpose of ascertaining sections 31(2)(a) – (e)	17
For the purpose of protecting charities sections 31(2)(f) – (h)...	23
For the purpose of health and safety sections 31(2)(i) – (j)	23
Confidential sources.....	25
Sections 31(1)(h) and (i)	26
Neither confirm nor deny.....	26
The public interest test.....	28
Protection from crime and its consequences.....	29
Prejudice to investigations	33
Voluntary supply of information.....	33
Public interest in favour of disclosure	34
Probity of investigations	35

Historical records	35
Other considerations.....	36
More information	37

Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.
2. An overview of the main provisions of FOIA can be found in [The Guide to Freedom of Information](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.
4. This guidance explains to public authorities how the exemption provided by section 31 protects the work of the law enforcement agencies and prevents information being disclosed that would increase the risk of the law being broken.

Overview

- Section 31 provides a prejudice based exemption which protects a variety of law enforcement interests.
- It is closely linked to section 30. The exemption from the duty to communicate information can only be applied to information that is not exempt by virtue of section 30.
- The exemptions from the duty to confirm or deny are **not** mutually exclusive.
- Section 31 can be claimed by any public authority, not just those with law enforcement functions.
- For example, section 31(1)(a) – prevention or detection of crime, can protect information on a public authority's systems which would make it more vulnerable to crime . It can also be used by a public authority that has no law enforcement function to protect the work of one that does.
- When considering the prejudice test account should be taken of any mosaic and precedent effects.

- Sections 31(g) – (i) are engaged by reference to section 31(2).
- For any of these exemptions to apply the public authority claiming them must be able to identify a public authority that has functions for one of the purposes specified in section 31(2) and that function must be prejudiced by the disclosure.
- Functions are the core functions of a public authority; they will normally be functions conferred by statute or, in the case of government departments by the Crown.
- The first five purposes described by section 31(2) all relate to a public authority's ability to 'ascertain' something. This means the relevant public authority must have the responsibility to determine the issue with some certainty.
- Many of the purposes described by section 31(2) can involve investigations. The information relating to confidential sources used in such investigations is protected not by section 31, but by section 30(2).
- There is a very strong public interest in protecting the law enforcement capabilities of public authorities.
- When considering the public interest in preventing crime it is important to take account of all the consequences that can be 'anticipated as realistic possibilities'.

What FOIA says

5. Section 31 states:

31.—(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

- the prevention or detection of crime,
- the apprehension or prosecution of offenders,
- the administration of justice,
- the assessment or collection of any tax or duty or of

any imposition of a similar nature,

- (e) the operation of immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

(2) The purposes referred to in subsection (1)(g) to (i) are -

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,

(f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,

(g) the purpose of protecting the property of charities from loss or misapplication,

(h) the purpose of recovering the property of charities,

(i) the purpose of securing the health, safety and welfare of persons at work, and

(j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with actions of persons at work.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

6. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but, before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.
7. The exemption is split into three main sections. Sections 31(1)(a) – (f) provide protection for information which would prejudice, what will be referred to for the purposes of this guidance as, general law enforcement activities. Sections 31(1)(g) –(i) are engaged by reference to a range of functions that public authorities carry out for the purposes listed in subsection 31(2). Section 31(3) provides an exemption from the duty to confirm or deny whether information is held.
8. The term 'law enforcement' should be interpreted broadly. In the case of *William Thomas Stevenson v the Information Commissioner and North Lancashire Teaching Primary Care Trust* the Upper Tribunal commented that "*it is plain from reading the activities listed in s.31(1) and the purposes specified in s.31(2), that they include activities and purposes which go beyond actual law enforcement in the sense of taking civil or criminal or regulatory proceedings. They include a wide*

variety of activities which can be regarded as in aid of or related to the enforcement of (i) the criminal law, (ii) any regulatory regime established by statute, (iii) professional and other disciplinary codes, (iv) standards of fitness and competence for acting as a company director or other manager of a corporate body (v) aspects of law relating to charities and their property and (vi) standards of health and safety at work” (paragraph 75).

Sections 30 and 31

9. Sections 30 and 31 are closely related. Although there are important differences in how they apply and who can use them, the two exemptions do complement each other. Together they protect information which, if disclosed, would undermine the work of law enforcement agencies or increase the risk of the law being broken.
10. The exemptions from the duty to communicate information provided by sections 31(1) and (2) can only be applied to information which is not exempt by virtue of section 30. This remains the case even if the public interest in relation to section 30 favours disclosure. Although the two exemptions cannot apply to the same piece of information, they could both be used in response to the same request as illustrated below.

Example

Following an incident in which fire arms officers arrested a gunman; the police received a request from a journalist seeking both the police’s protocols for deploying armed officers and details of the actual arrest. The protocol for deploying armed officers would be exempt under section 31 if the police could demonstrate that its disclosure would prejudice the prevention or detection of crime.

The information relating to the actual arrest would be exempt under section 30. Even if section 30 could not be maintained after considering the public interest test, section 31 could still not be applied to the information on the arrests.

11. Although the exemptions from the duty to communicate information under sections 30 and 31 are mutually exclusive, the exemptions from the duty to confirm or deny are not; they can be applied to the same information.

12. Section 30 can only be claimed by public authorities that have particular powers or duties whereas section 31 can be claimed by any public authority. They therefore complement each other because they can be used to protect the same information held by different public authorities.

Example

A village hall, owned and managed by the local parish council, is broken into. The clerk to the parish council provides a statement to the police in which he describes a number of suspects. The events and descriptions are also recorded in a report submitted to the parish council by the clerk.

The police hold the statement for the purpose of the criminal investigation which they have a duty to conduct. Therefore, if they received a request they could withhold the statement under section 30.

The parish council do not have any duty to investigate the crime and so section 30 would not be available to it. However, on the basis that disclosing the report would alert the suspects to the need to cover their tracks, the council could apply section 31 as its disclosure would prejudice the apprehension of offenders.

13. Further information is available on section 30 in the Information Commissioner's guidance [Investigations and proceedings \(section 30\)](#).

The prejudice test

14. Section 31 is subject to a test of prejudice. This means that information can only be withheld if its disclosure would, or would be likely to, prejudice one of the activities listed in either subsection 31(1) or (2). A detailed explanation of the test is provided in our guidance on [the prejudice test](#).
15. The prejudice test involves a number of steps:
 - One of the law enforcement interests protected by section 31 must be harmed by the disclosure.
 - The prejudice claimed must be real, actual or of substance. Therefore, if the harm was only trivial, the

exemption would not be engaged.

- The public authority must be able to demonstrate a causal link between the disclosure and the harm claimed.
 - The public authority must then decide what the likelihood of the harm actually occurring is, ie would it occur, or is it only likely to occur?
16. Deciding whether the prejudice would occur or is only likely to occur is important. The more certain the prejudice, the greater weight it will carry when considering the public interest. In this context the term “would prejudice” means that it has to be more probable than not that the prejudice would occur. “Would be likely to prejudice” is a lower test; there must be a real and significant risk, even if risk of prejudice occurring is less than 50 per cent.
17. If a public authority’s handling of a request results in a complaint to the Information Commissioner, the onus will be on the public authority to demonstrate that the specified prejudice test is met.

Sections 31(1)(a) – (f) – general law enforcement activities.

Section 31(1)(a) the prevention or detection of crime

18. Section 31(1)(a) will cover all aspects of the prevention and detection of crime. It could apply to information on general policies and methods adopted by law enforcement agencies. For example, the police’s procedures for collecting forensic evidence, Her Majesty’s Revenue and Customs procedures for investigating tax evasion.
19. The exemption also covers information held by public authorities without any specific law enforcement responsibilities. It could be used by a public authority to withhold copies of information it had provided to a law enforcement agency as part of an investigation. It could also be used to withhold information that would make anyone, including the public authority itself, more vulnerable to crime for example, by disclosing its own security procedures, such as alarm codes.

20. Whilst in some instances information held for the purposes of preventing or detecting crime will be exempt, it does not have to be held for such purposes for its disclosure to be prejudicial.

Example

In [*Yiannis Voyias v Information Commissioner and the London Borough of Camden \(EA/2001/0007 23 January 2013\)*](#) the

First Tier Tribunal upheld the council's decision to withhold the addresses of empty houses under section 31(1)(a).

The information had been collected for council tax purposes and to inform the council's policies aimed at returning empty homes to the housing market. However, the First Tier Tribunal was satisfied that, if disclosed, the information could be used by squatters. Although squatting was not at that time a criminal offence, squatting is associated with criminal damage, for example when entering and securing properties. Criminal gangs who stripped buildings of valuable materials and fixtures could also use the list to target properties.

Mosaic and precedent effects

21. The prejudice test is not limited to the harm that could be caused by the requested information on its own. Account can be taken of any harm likely to arise if the requested information were put together with other information. This is commonly known as the 'mosaic effect'. As explained in the Information Commissioner's guidance [information in the public domain](#), the mosaic effect usually considers the prejudice that would be caused if the requested information was combined with information already in the public domain.
22. However, some requests can set a precedent, ie complying with one request would make it more difficult to refuse requests for similar information in the future. It is therefore appropriate to consider any harm that would be caused by combining the requested information with the information a public authority could be forced to subsequently provide if the current requested was complied with. This is known as the precedent effect.

Example

ICO Decision Notice [FS50122063](#) found that Her Majesty's Revenue and Customs were entitled to reject a request for the

number of drug seizures made at particular ports. This was on the basis that responding to the request would make it harder to resist future requests for the number of drug seizures at other ports. If all this information was put together it would eventually reveal the pattern of drug seizures throughout the country. This in turn would enable criminals to identify where the public authority deployed its resources and where smuggling was less likely to be detected.

23. Both the mosaic and the precedent effects are relevant to the other exemptions provided by sections 31(1) and (2).

Section 31(1)(b) the apprehension or prosecution of offenders

24. There is clearly some overlap between this subsection and 31(1)(a). It could potentially cover information on general procedures relating to the apprehension of offenders or the process for prosecuting offenders. It will also protect information relating to specific crimes as illustrated by the example at paragraph 12 above, ie where the public authority holding it does not itself have law enforcement functions, powers or duties.

Section 31(1)(c) the administration of justice

25. The administration of justice is a broad term. It applies to the justice system as whole. Amongst other interests, the exemption will protect information if its disclosure would undermine particular proceedings. To this extent there is an overlap between section 31(1)(c) and the previous exemption, section 31(1)(b) which protects the process for prosecuting offenders.

Example

ICO Decision Notice [FS50209828](#) considered the application of section 31(1)(c) by the Northern Ireland Office (NIO). At that time the NIO provided a forensic science service to the police. The request was for the details of forensic evidence which the NIO had examined in relation to a double murder. At the time of the request two defendants were awaiting trial for the murders.

The NIO explained that although a large amount of forensic

evidence was collected, some of it would prove irrelevant and other evidence could be misleading if not presented objectively. The NIO was concerned that placing the information in the public domain before the trials would in effect interfere with the right to a fair trial. The Information Commissioner was satisfied that section 31(1)(c) was engaged.

The NIO also argued that disclosing the information could assist those responsible for the murders to cover their tracks which again would undermine the administration of justice. This argument would also engage section 31(1)(b) – the prosecution of offenders.

Finally, the NIO presented a broader argument, that the disclosure would help criminals adopt techniques for avoiding detection in the future. Again this argument would support the application of section 31(1)(b)

This case also provides an example of how section 31 can complement the protection provided by section 30. If the same request had been submitted to the police they could have applied section 30(1)(a)(i) to withhold information which they had obtained for the purposes of a criminal investigation which they had the duty to conduct. However, the NIO could not rely on section 30 because it did not have the required duty to investigate. But section 31 provided protection for the same information in its hands.

26. As well as preventing any prejudice to particular cases, section 31(1)(c) can protect a wide range of judicial bodies, such as courts, coroner's courts and tribunals from disclosures that would in any way interfere with their efficiency and effectiveness, or their ability to conduct proceedings fairly. This will include prejudice to the administrative arrangements for these bodies and the appointment of magistrates and judges, or arrangements for the care of witnesses. It would also cover any disclosures that would interfere with the execution of process and orders in civil cases.
27. Anything that would make it harder for the public to access the justice system could also engage the exemption.

Section 31(1)(d) the assessment or collection of any tax or duty or any imposition of a similar nature

28. The phrase tax, duty or imposition of a similar nature is a very broad term. It captures not only national taxation but National Insurance Contributions and local taxation such as Council Tax. Her Majesty's Revenue and Customs (HMRC) is the most obvious public authority that will have cause to use the exemption.
29. It will protect information if its disclosure would prejudice the collection of tax from a particular person, or be of use to those evading tax. It would also apply if disclosing the information would promote tax avoidance.

Example

ICO Decision Notice [FS50089784](#) found that a request to HMRC for information on its investigation into a particular company's corporation tax affairs could be refused under section 31(1)(d).

HMRC argued that the information would not only prejudice its current investigation, but some of the information would reveal its approach to such investigations, making it harder to investigate similar cases in the future.

Example

In [*Paul Doherty v Information Commissioner and Her Majesty's Revenue and Customs \(EA/2011/0202 25 January 2012\)*](#) the requested information concerned loopholes in inheritance tax.

The appellant argued, at paragraph 6, that the exemption should only be used to prevent people illegally evading tax, not avoiding tax by exploiting a perfectly legal tax loophole. In dismissing this argument the First Tier Tribunal explained that it was satisfied that disclosing the information would result in, "*less tax being lawfully due than would otherwise have been the case*".

30. The exemption would also cover information that would make it easier to disrupt the online collection of taxes.
31. As well as the more office based activities, HMRC undertake 'policing' operations on the ground, for example to prevent tobacco smuggling or the illegal use of red diesel. Information that would frustrate such operations would engage section 31(1)(d).

Section 31(1)(e) the operation of immigration controls

32. The exemption will be engaged if disclosure would, or would be likely to, prejudice physical immigration controls at points of entry into the United Kingdom. It could also protect information about issuing and approving work permits and the processing of asylum applications.

Example

ICO Decision Notice [FS50286261](#) considered a request to the Home Office for information about the arrangements for a flight that had been chartered for the deportation of failed asylum seekers. By the time of the request the asylum seekers had already been deported. The Home Office was concerned that disclosing the information could prejudice future deportations and the Information Commissioner accepted that this was an interest protected by section 31(1)(e).

However, he found that disclosing the ratio of guards to asylum seekers would not be prejudicial. This was because the security arrangements for any flight would be tailored to the particular circumstances of the deportation. Therefore, revealing the arrangement for one flight would not provide meaningful intelligence to anyone wanting to obstruct future deportations.

This demonstrates that it is not enough for the information to relate to an interest protected by section 31(1)(e), its disclosure must also at least be likely to prejudice that interest. The onus is on the public authority to explain how that prejudice would arise and why it is likely to occur.

Example

ICO Decision Notice [FS50172159](#) considered another request made to the Home Office, this time for information from a review of the security of photographic evidence used in citizenship tests. The Information Commissioner accepted that if the information would undermine the integrity of the test, the exemption would be engaged. However, in the particular circumstances, he found that the actual information would not cause the prejudice claimed.

Section 31(1)(f) the maintenance of security and good order in prisons or other institutions where persons are lawfully detained

33. The “other institutions” referred to will include Young Offender Institutions, Secure Hospitals, Secure Training Centres, Local Authority Secure Units and Immigration Detention and Removal Centres.
34. The term “security and good order” will include, but is not limited to, both external and internal security arrangements. It will also protect any information likely to prejudice the orderly running of these institutions from disclosure. Conceivably this could include information that has the potential to inflame an already volatile atmosphere amongst the prison population.

Example

ICO Decision Notice [FS50383346](#) accepted that a request to the Ministry of Justice for the floor plan of HMP Belmarsh was exempt as it could be of assistance to anyone planning an escape.

Sections 31(1)(g) – (i) – the exemptions by reference to section 31(2)

35. The three remaining exemptions provided by section 31(1) are engaged by reference to subsection 31(2). The exemption used most often is section 31(1)(g).

Section 31(1)(g)

36. Section 31(1)(g) states:

31 – (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

37. Subsection (2) lists ten purposes (a) to (j) which will be discussed in more detail shortly.

Functions for a specified purpose

38. To engage the exemption a public authority must:

- identify the public authority that has been entrusted with a function to fulfil one of the purposes listed in subsection (2);
- confirm that the function has been specifically designed to fulfil that purpose, and
- explain how the disclosure would prejudice that function.

Example

The Health and Safety Executive (HSE) has a function to secure the health, safety and welfare of people at work under the Health and Safety Act 1974. This purpose is listed at subsection (2)(i). Therefore, disclosure of any information that would prejudice the HSE's ability to perform that function would engage the exemption.

The prejudice does not need to be caused to a specific investigation by the HSE. The exemption will also protect the ability of a public authority to carry out the function generally.

For example, the HSE could withhold manuals on how to conduct its investigations, if their disclosure would prejudice those investigations.

39. The exemption is not only available to the public authority that has a relevant function. It can be claimed by any public authority provided that it can specify who does have the relevant function and why disclosure would, or would likely, prejudice it.

Example

The HSE investigates an accident at a school in which a member of staff was injured. The school would hold information about the accident. If the disclosure of the information held by the school would prejudice the HSE's investigation, the school could withhold it under section 31(2)(i).

Where one public authority claims that a disclosure would prejudice the functions of another the Information Commissioner would expect that public authority to have obtained evidence from the public authority affected by the disclosure.

Therefore, the school would need to have discussed the matter with the HSE and have satisfied itself that the prejudice would occur before applying the exemption.

40. In the example, the basis for engaging the exemption is the prejudice to the HSE's function. Although the school would have a general duty as an employer to ensure the workplace is safe, the Information Commissioner would not accept that such ancillary duties constitute a function for the purposes of securing the health, safety and welfare of people at work. The function must be one which has been specifically entrusted to the relevant public authority to fulfil, and not just something that is incidental to its main functions. The same rationale will apply when considering whether a public authority has a function for any of the other purposes listed in subsection (2).
41. The functions in question must be imposed by statute or, in the case of government departments authorised by the Crown. Therefore, the Information Commissioner is unlikely to accept that the exemption is engaged unless legislation which specifically imposes a positive duty on the relevant public authority to fulfil that purpose can be identified.
42. The application of section 31(2) is now considered in more detail. The Information Commissioner has greater experience

of those provisions which are claimed more frequently and this is reflected in this guidance.

For the purpose of ascertaining sections 31(2)(a) – (e)

43. The first five exemptions listed under section 31(2) all include the term “ascertaining”.
44. To ‘ascertain’ is to make certain or prove. In this context it means that the public authority with the function must have the power to determine the matter in hand with some certainty. The public authority must not only be responsible for the investigation but it must also have the authority to make a formal decision as to whether that person has complied with the law. This could include taking direct action itself such as revoking licences or imposing fines, or it could involve taking a formal decision to prosecute an offender.

45. Section 31(2)(a) states:

31 – (2)(a) the purpose of ascertaining whether any person has failed to comply with the law,

46. The importance of the relevant public authority having the power to make a formal decision to take some action is demonstrated by the following examples.

Example

ICO Decision Notice [FS50382936](#) considered a request for information held by British Waterways about licences to use the waterways. British Waterways explained that boaters were obliged by statute to have a licence to use its waterways. One of the conditions British Waterways imposed on boaters was that they could not remain continuously in one place for more than 14 days (apart from at their home mooring). British Waterways had the authority to police the licensing system and to determine whether any boater was in breach of this condition. The requested information had been collected by British Waterway’s enforcement team for this purpose. If the condition was breached British Waterways could take action against the offender, including prosecuting them or revoking their licences.

It was therefore clear that British Waterways had a function to determine whether the boaters had complied with the law. The

Information Commissioner ultimately accepted that disclosing the information would prejudice that function and, therefore, that section 31(1)(g) was engaged via section 31(2)(a).

Example

In [Foreign and Commonwealth Office v Information Commissioner \(EA/2011/011 21 September 2011\)](#) the First Tier Tribunal considered a request for information generated by the Foreign and Commonwealth Office (FCO) during an internal investigation into the leak of a confidential letter from the British Ambassador to the United States. One of the exemptions used by the FCO to withhold the information was section 31(1)(g) via 31(2)(a). Leaking the Ambassador's letter could have been a breach of the Official Secrets Act.

The FCO argued that it had a responsibility to find out who was responsible for the leak and that disclosing the information would make it harder for the FCO to track down the culprits both in this case and in the future. However, the Tribunal rejected this argument; it found that the term "... "ascertain" connotes some element of determination ..." (paragraph 33). Therefore, although the FCO's investigation may have identified a suspect, the matter would then have to have been passed to the appropriate authority to determine whether that suspect had failed to comply with the law. The exemption was not engaged because the FCO did not have a function to officially determine guilt.

47. In the examples the public authority in receipt of the request was also the one with the relevant function, however, it should be remembered that any public authority can claim the exemption as explained at paragraph 38.
48. Section 31(2)(b) states:

31 – (2)(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,

49. The Information Commissioner's experience suggests that this is not a widely used exemption.

50. Improper conduct relates to how people conduct themselves professionally. For conduct to be improper it must be more serious than simply poor performance. It implies behaviour that is unethical.
51. The Information Commissioner would generally expect there to be a formal code of conduct that members of a profession are expected to adhere to and a recognised definition of improper conduct. In many cases such a code is likely to be supported by statute though this is not a prerequisite. It will be necessary, on a case by case basis, to identify the relevant definition and which elements of any code of conduct it applies to. This exemption will apply if disclosure would prejudice a public authority's ability to ascertain whether elements of the code falling within the stated definition of improper conduct have been breached.
52. Public authorities that have functions of ascertaining whether someone is responsible for improper conduct are likely to include those tasked with upholding professional standards such as the General Medical Council, or the Nursing and Midwifery Council.
53. Often there will be an overlap between section 31(2)(b) and investigations to ascertain a person's fitness or competence to carry on a profession, which are protected by section 31(2)(d).
54. Section 31(2)(c) states:

31 – (2)(c) the purpose of ascertaining whether circumstances exist which would justify regulatory action in pursuance of any enactment exist or may arise, any person has failed to comply with the law,

55. This exemption is one of the more frequently claimed in section 31. This reflects the fact that many activities and sectors of the economy are subject to statutory regulation. Regulators include such bodies as the Food Standards Agency, the Health and Safety Executive, the water services regulation authority OFWAT, and the Information Commissioner. Local authorities also have a number of regulatory responsibilities.
56. Regulators use a range of measures to ensure compliance with the legislation they are responsible for. These can include compelling someone to remedy a breach of the legislation through serving enforcement notices, imposing sanctions such as fines, the administration of a licensing regime (including the

revoking of licenses where necessary) or publicly censuring someone. All such measures constitute “regulatory action”.

57. For the exemption to apply the disclosure would have to, or be likely to, prejudice the ability of the regulator to determine whether any of these measures should be taken in the circumstances.

Example

In [Ms Pauline Reith v Information Commissioner and London Borough of Hammersmith and Fulham \(EA/2006/0058 1 June 2007\)](#) the appellant had requested the council's policy on towing away vehicles that were improperly parked. The request was originally refused under sections 31(1)(a) and (b) which relate to the prevention and detection of crime and the apprehension and prosecution of offenders. However, at tribunal stage, it was recognised that parking infringements had been decriminalised and so these exemptions did not apply. Nevertheless, the Tribunal did accept that the enforcement of parking restrictions was a matter that fell under section 31(2)(c).

Example

ICO Decision Notice [FS50382270](#) concerned a request to the Charity Commission for information it held about a particular organisation. Some of the information related to the organisation's initial application to register as a charity and a complaint about how the Charity Commission had dealt with that application. The Charity Commission successfully argued that this information would help others make bogus applications in the future as it revealed details about how applications were vetted and how the public authority investigated suspicions about applications.

Example

ICO Decision Notice [FS50379523](#) concerned a request to the Food Standard Agency (FSA) for information relating to whether meat from the offspring of cloned livestock had

entered the human food chain. At the time of the request such food was considered to be 'novel food'. Producers of novel food have to contact the FSA which is then responsible for ensuring that the food is safe and for authorising its sale. Although the FSA authorises the sale of novel food, it is local authorities who decide whether action should be taken against someone who has failed to apply for authorisation.

The FSA explained that it had not received any applications to authorise selling such meat. Therefore, following newspaper reports that it was being sold to the public, the FSA had taken steps to identify the producers. It then passed the identities to the relevant councils. The FSA successfully argued that, at the time of the request, a number of local authorities were investigating whether to take any action against the meat producers and that disclosing the requested information would prejudice those investigations.

58. Section 31(2)(d) states:

31 – (2)(d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on.

59. The exemption provided by section 31(2)(d) protects the activities of public authorities such as the Department for Business Innovation and Skills (DBIS) and the General Medical Council (GMC). DBIS has powers under the Company Directors Disqualification Act 1986 to determine the fitness and competence of individuals to act as company directors. The GMC investigates complaints from patients and determines whether doctors are fit to practise.

Example

In ICO Decision Notice [FS50268922](#) the GMC argued that exhibits considered at a Fitness to Practise Hearing were exempt under section 31(2)(d). Although the hearing had already taken place and the doctor in question had been struck off the medical register, the doctor was appealing the decision in the courts. So the matter was still live and the GMC may still have been required to reconsider the issues.

The Information Commissioner found that in the

circumstances of the case disclosing the information did have the potential to prejudice the GMC's ability to ascertain the doctor's fitness to carry out his profession.

60. As with the other functions described in section 31(2), the function of ascertaining a person's fitness or competence to manage companies or undertake a profession etc is most likely to be derived from statute. The statutory language imposing that function does not have to mirror that used in section 31(2)(d) but it obviously has to convey the same meaning.
61. "Fitness" is taken to refer to the character or suitability of the individual for the particular role whilst "competence" refers to whether the individual has the necessary skills, training and ability to perform that role.
62. Section 31(2)(e) states:

31 – (2)(e) the purpose of ascertaining the cause of an accident,

63. The most obvious public authority that has a function for the purpose described in section 31(2)(e) - ascertaining the cause of an accident, is the Health and Safety Executive but there are others, for example, the police have statutory duties to investigate road accidents.

Example

In ICO Decision Notice [FS50156313](#) the Air Accident Investigation Branch (AAIB) of the Department of Transport withheld a report into an incident that occurred during a flight. Under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996 the AAIB has a statutory duty to investigate the cause of air accidents.

There is a distinction between 'accidents' and 'incidents'. Incidents are occurrences which are dealt with before any accident results eg a fault is detected but somehow resolved before the safety of the plane is compromised. However, incident reports are used when investigating the cause of accidents as they can reveal whether there is any history of problems with an aircraft and this can help identify the cause of the accident.

The Information Commissioner was satisfied that the exemption could apply to information relating to incidents, but only if AAIB could demonstrate that its disclosure would or would be likely to, undermine ongoing, or future investigations into accidents. In these particular circumstances the Information Commissioner found that disclosure of the actual information would not prejudice any investigation.

For the purpose of protecting charities sections 31(2)(f) – (h)

64. Sections 31(2)(f)-(h) state:

31 – (2)

- (f) the purpose of protecting charities against misconduct or management (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities.

65. The Information Commissioner has had little experience of the application of these exemptions. The Charity Commission is the most obvious public authority with functions for the purposes described in section 31(2)(f) and (g). For example, under section 46 of the Charities Act 2011 the Charity Commission can formally investigate possible misconduct. Importantly, it also has the power, under section 79 of that Act, to suspend a trustee. So not only can it investigate the matter, it has the power to take the necessary steps to effectively protect the charity.
66. The onus will be on the public authority claiming these exemptions to demonstrate that it, or another public authority, has a function described by the particular exemption and how disclosing the requested information would prejudice the performance of that function.

For the purpose of health and safety sections 31(2)(i) – (j)

67. Sections 31(2)(i) and (j) state:

31 – (2)

- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with actions of persons at work.

68. The objectives of securing the health and safety of employees or protecting the public can be achieved in different ways. In some circumstances it will involve taking immediate action to halt a dangerous practice. In other situations these goals could be achieved by developing codes of practice or training programmes.
69. When applying either exemption a public authority must be able to identify the function that would be prejudiced.
70. The Health and Safety Executive (HSE) enforces the Health and Safety Act 1974. Part I states that the, "*... provisions of this Part shall have effect with a view to (a) securing the health safety and welfare of persons at work, (b) protecting persons other than those at work against risks to health or safety arising out of or in connection with the activities of persons at work.*" This language is mirrored in the exemptions provided by sections 31(2)(i) and (j) and it is prejudice to these functions of the HSE that will most commonly engage the exemptions.
71. This does not mean that it is only the HSE that could apply the exemption. Other public authorities may hold information, the disclosure of which would prejudice the HSE's functions.
72. The Information Commissioner recognises that all employers have responsibilities under the Health and Safety Act 1974 to ensure 1) the health and safety of their staff and 2) that the activities their staff undertake do not endanger the public. However, for a function to satisfy section 31(1)(g) it must be one that has been specifically entrusted to the public authority as opposed to merely an ancillary duty.
73. The Upper Tribunal's decision in [William Thomas Stevenson v the Information Commissioner and North Lancashire Teaching Primary Care Trust](#) supports the Commissioner's interpretation. The judge stated that sections 31(1)(g) and 31(2)(j) "can only apply where protection of the public against health and safety risks are among the public authority's purposes"(paragraph

79). He also commented that even though a public authority may have a function of protecting the public against health and safety risks, this does not necessarily mean that everything it does in exercising that function will necessarily engage section 31(2)(j). For example, where a public authority is carrying out routine monitoring or quality assurance activities this may, but will not necessarily, engage the exemption.

Example

In the aforementioned case, [William Thomas Stevenson v the Information Commissioner and North Lancashire Teaching Primary Care Trust](#), the Upper Tribunal commented that health and safety at work legislation “*is generally concerned with preventing people being harmed, in the sense of being worse off, physically or mentally, than they would have been if they had not been affected by the work in question*”(paragraph 80).

The judge concluded that in the circumstances the public authority’s function of monitoring and improving the standard of healthcare was “*a sufficiently important part of the overall structure designed to ensure a safe healthcare system*” that it was part of law enforcement and therefore capable of falling within section 31(1) and 31(2)(j). He also commented that, in a medical context, “*if the position is that systematically poor healthcare has or may have left patients in a substantially worse position than would have been the case if a reasonably competent standard of care had been provided, the case is capable of falling within s. 31(2)(j)*” (paragraph 82).

However, the judge also explained that there would be instances in which a public authority exercising its functions in relation to improving healthcare would not fall within the exemption in section 31(2)(j) because it could not be said to be “*protecting persons...against risk to health and safety*”. When providing the example of a PCT seeking to reduce its waiting times for replacement hip surgery he commented that, it would not seem to him that the public authority would “*really [be] acting for the purpose of protecting patients against “risk to health and safety”*” (paragraph 80).

Confidential sources

74. The variety of functions described in sections 31(2)(a) – (j) have been looked at in some detail. Very often they will involve a public authority carrying out some form of investigation,

during which the public authority may obtain information from a confidential source. For example, an investigation by the Health and Safety Executive may be triggered by information from someone who wants to remain anonymous.

75. Information relating to the use of these confidential sources and the information they provide is protected under the section 30(2) exemption. Section 30(2) is class based which means that there is no need to demonstrate that disclosing the information would prejudice an investigation for it to be exempt. This reflects the importance of not deterring individuals from volunteering information to public authorities. However, the exemption is subject to the public interest test.
76. Further information on confidential sources and the application of section 30(2) is contained in the Information Commissioner's guidance [Investigations and proceedings \(section 30\)](#).

Sections 31(1)(h) and (i)

77. Under section 31(1)(h) information is exempt if its disclosure would, or would be likely to, prejudice any civil proceedings which are bought by or on behalf of, a public authority and which arise out of an investigation conducted for any of the purposes specified in subsection section 31(2). To qualify, the proceedings must arise out of investigations carried out under Her Majesty's prerogative or powers conferred under an enactment.
78. Subsection 31(1)(i) is very similar in structure to section 31(1)(h), but the prejudice is only in respect of one specific area, an inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976.

Neither confirm nor deny

79. Even where a public authority has grounds for refusing to provide the information requested it is still obliged, under section 1(1)(a), to inform the applicant whether it holds that information unless this would itself prejudice any of the law enforcement activities discussed above.
80. Section 31(3) states:

31.—(3) The duty to confirm or deny does not arise if, or to the extent that compliance with section 1(1)(a) would or would be likely to, prejudice any of the matters mentioned in subsection (1).

81. Exemptions from the duty to confirm or deny are generally referred to as NCND provisions.
82. The NCND provision under section 31(3) and its equivalent under section 30(3) are not mutually exclusive; they can both be claimed in respect of the same information. This is in contrast to the exemptions from the duty to communicate information provided by these two exemptions.
83. The prejudice in terms of section 31(3) will depend on how the request is phrased. Typically, where a request identifies an individual or an organisation as the possible subject of an investigation or a particular line of enquiry a public authority could be pursuing, the more chance there is that confirming the information's existence would, or would be likely to, prejudice that investigation.

Example

ICO Decision Notice [FS50150268](#) dealt with a request made to the Office of Fair Trading (OFT). The applicant requested information about a particular company that he believed the OFT was investigating.

The OFT relied on section 31(3) to refuse to confirm or deny whether any information was held. This was on the basis that confirmation or denial would reveal whether or not the company was under investigation. This in turn would prejudice the FSA's functions for a number of purposes described in section 31(2), ie 31(2)(a) - compliance with the law, 31(2)(b) – improper conduct, and 31(2)(c) – regulatory action.

OFT argued that if it was to routinely confirm or deny whether it held information on any named company this would provide a means for any company which suspected it was under investigation to have this confirmed. The company could then take steps to conceal evidence.

84. Clearly confirming there was, or had been, an investigation would not be prejudicial if there had already been official acknowledgement of its existence.
85. The example above demonstrates the need, in some circumstances, to apply the NCND provision consistently. Where confirmation or denial would reveal whether a particular person was under investigation and where this would, or would be likely to, prejudice such investigations, public authorities should be alert to the need to apply the NCND provision. If it is only applied where the requested information is held, this will become apparent over time and defeat the purpose behind the exemption.
86. There is also the potential that confirming or denying whether information is held in response to a series of requests about the use of a particular investigative technique could prejudice the work of law enforcement agencies.

Example

Her Majesty's Revenue and Customs (HMRC) receives a request asking for the number of occasions that authorisation has been granted to conduct covert surveillance on companies importing goods from a particular country, over the last three months. The request is repeated every three months.

It is important that HMRC respond to these requests consistently. If it denied holding information when no authorisations had been granted but applied the NCND exemption when information was held, this would itself be very revealing.

87. When the Information Commissioner investigates a complaint about the application of section 31(3) it will usually be possible to make a decision on its use without knowing whether the information is held. However, the Information Commissioner does reserve his right to be informed whether or not it is held and in exceptional cases to have access to the information itself.

The public interest test

88. There is a very strong public interest in protecting the ability of public authorities to enforce the law. However, section 31

covers a wide range of activities and it is important to focus on the likelihood and the consequences of disclosing the actual information in question and not treat the exemption as being absolute.

89. There are links between the information and interests protected by section 31 and section 30 – investigations and proceedings. It is therefore not surprising that some of the public interest arguments are similar too. In some cases the arguments will be exactly the same. For example, where say a local authority is withholding information to avoid prejudicing a police investigation.

Example

In [*Reginald Charles Hargrave v Information Commissioner and The National Archive \(EA/2007/0041 3 December 2007\)*](#) the appellant had requested information from a police investigation into an unsolved murder that took place in 1954. The information was now held by The National Archives which refused to disclose it relying on sections 31(1)(a),(b),(c). Although the case was very old The National Archives was able to produce evidence that persuaded the Information Tribunal that there was a significant possibility that the killer could be identified and prosecuted in the future and that disclosure would be prejudicial to this. On this basis the Tribunal found that the public interest favoured maintaining the exemptions claimed.

90. Balanced against the need to protect the work of law enforcement agencies there is a public interest in disclosing information that holds these bodies to account and increases transparency about how they perform their functions. Without such information the public may lack confidence and trust in these bodies. For further information see our guidance on [the public interest test](#).

Protection from crime and its consequences

91. The exemptions provided by sections 31(1)(a) and (b) very obviously serve to protect society from crime. The matters covered by some of the other exemptions can also prevent the disclosure of information that would facilitate or encourage criminal activity.

92. There is a clear public interest in protecting society from the impact of crime. The greater the potential for a disclosure to result in crime, the greater the public interest in maintaining the exemption. The victims of crime can be both organisations and individuals. Although there is a public interest in protecting both, there is a greater public interest in protecting individuals from the impact of crime.
93. The impact of crime is not confined to its immediate victims. A request for the addresses of empty homes provided the opportunity to consider the wider repercussions of crime in more detail.

Example

In [*London Borough of Camden v The Information Commissioner & Yiannis Voyias \[2012\] UKUT 190 \(ACC\)*](#) the Upper Tribunal considered the appeal of a decision by the First Tier Tribunal (FTT) which ordered the Council to disclose a list of unoccupied dwellings that were not owned by individuals. The Council had withheld the information under section 31(1)(a) - the prevention of crime.

The FTT had found that the list would be used by what were described as 'organised squatters' who occupied properties simply in order to meet their housing needs. At the time of the request squatting was not a criminal offence and the FTT considered that the only criminal activity that could be attributed to organised squatters was the criminal damage committed when breaking into the properties. It found the public interest arguments in favour of disclosure outweighed the public interest in preventing such crimes.

The Upper Tribunal set aside this decision. It found that the FTT had taken too narrow a view of the criminal activity that would be a consequence of illegal occupation, eg there was the risk of the theft of electricity. It was also appropriate to take account of the cost of removing those illegally occupying properties.

As well as the financial costs of crime there are social costs. In this case criminal damage reduces the quality of life in the area; neighbours would live in fear of further crime being committed.

The Upper Tribunal also considered that the disclosure of the list could change the behaviour of other criminals. The FTT

had previously found that although criminals steal fixtures and fittings from empty properties it was mainly building sites that were targeted and therefore these crimes were ignored when assessing the public interest. However, the Upper Tribunal believed that this failed to take account of the likelihood that criminals would change their behaviour and take advantage of the list to target those properties too.

The case was remitted to a differently constituted FTT to be reheard. The Upper Tribunal recognised that there was a limit to the consequences anyone could claim would result from breaking into empty properties. At paragraph 11 it advised this FTT that it, "*... should take account of any consequences that can readily be anticipated as realistic possibilities.*"

The new FTT ultimately found that the public interest favoured withholding the information.

94. The two most important points from the above case are:
 - the need to take account of any consequence that is a realistic possibility and
 - the relevance of the social or psychological effects of crime.
95. Care is needed when considering the consequences that can be anticipated. The public interest in maintaining an exemption is limited to the interests that are inherent in that exemption. So only the consequences of the harm that the exemption guards against can be considered. For example, the public interest in maintaining section 31(1)(a) - prevention of crime, could only take account of the consequences associated with the crime that would result from disclosing the requested information.

Example

A request for the specifications of a security system is refused under section 31(1)(a) on the basis that it would reveal how to undermine the system and make any property using it vulnerable to break-ins. The focus of the public interest in maintaining the exemption would be the consequence of those break-ins and the cost of installing new security systems.

The disclosure could also prejudice the commercial interests of the company providing the security system. However, those consequences do not relate to the crimes that would result from disclosing the information.

96. It is also important to recognise that the public authority can only take account of consequences that are realistic possibilities. Public authorities cannot take account of either crimes or the consequences of those crimes which are too speculative or fanciful.

Example

In [London Borough of Camden v The Information Commissioner & Yiannis Voyias \[2012\] UKUT 190 \(ACC\)](#), the Upper Tribunal explained what public interest factors the FTT should take account of when re-hearing the case. These included preventing not just the act of criminal damage but the consequences that would follow that act, such as the direct costs of repairing property, and indirect costs such as the impact on local property values, increased insurance premiums, and the cost of evictions.

But more fanciful potential consequences should be excluded. For example, when assessing the consequences of squatters breaking into properties it would not be appropriate to consider "... *the possibility of a flying splinter blinding a passing child.*" (paragraph 11)

97. The consequences of crime also include the increased fear of crime. These psychological factors may not always be rational. People in the surrounding area may feel more vulnerable to crime than they actually are. Nevertheless, if the fear is real, it should be taken into account when considering the public interest in maintaining the exemption.
98. Section 31 is not solely concerned with criminal activities. There can be as great or, in some circumstances, a greater, public interest in protecting the other law enforcement activities covered by section 31. For example, sections 31(2)(i) and (j) could stop the release of information that would prejudice the ability of the Health and Safety Executive to prevent serious injury or the death of those at work or the

public. Each case needs to be considered on its own merits taking account of the actual harm that would be caused by disclosure together with all the circumstances of the case.

Prejudice to investigations

99. Many of the activities protected by section 31 will involve the relevant public authority conducting investigations. Public authorities should have regard for the purpose behind the investigation, ie the interest protected by the exemption. For example, weight should be given to the public interest in identifying medical professionals who are unfit to practice, or the public interest in discovering the cause of an accident so that it can be prevented from happening again.
100. The level of prejudice caused to any investigations will depend, at least in part, on the stage that the investigation has reached at the time of the request.
101. Investigators need private thinking space, or safe space, if they are going to fully explore all aspects of a case without fear that their half formed opinions would be reported in the press or enter the public domain. Such concerns would hinder the efficient running of an investigation. Investigators may expect their findings to be made public but at a later stage when they represent the fully considered conclusions of the investigation.

Voluntary supply of information

102. Investigations, particularly those protected by section 31(1)(g) via 31(2), can be aided by either individuals, or organisations providing information to the investigating authority. Where information is volunteered by a confidential source, ie someone who has provided information on the understanding that they will not be identified, the information and identity of its source will be protected by section 30(2) as explained at paragraph 74 above. However, even where the provider of the information is not a confidential source, there is still a public interest in not discouraging others from cooperating with public authorities and supplying them with the information they need on a voluntary basis.
103. Co-operation between those being regulated and the regulator is important. Organisations are often encouraged to report problems they have had. Investigations take less time when those under investigation co-operate. This can be true even where a regulator has the power to compel a party to supply

information as reliance on such powers often involves bureaucratic procedures which can cause delays. There is clearly a public interest in not deterring the voluntary supply of information. Further information on the factors affecting the weight to be attributed to this public interest argument is available in [the impact of disclosure on the voluntary supply of information](#).

Public interest in favour of disclosure

104. Although there is a clear public interest in protecting the ability of public authorities to perform their law enforcement activities, the public interest test under section 2 requires that all the circumstances of the case are considered. This will include the significance of the information itself and the issues that it addresses.

Example

ICO Decision Notice [FS50173181](#) concerned a request for a manual detailing the physical restraint methods used on young people in secure training centres. The request was made to the Youth Justice Board for England and Wales and was withheld under section 31(1)(f) – security and good order in prisons.

The exemption had been engaged on the basis that providing details of methods of restraint and the circumstances in which they could be used, would enable young offenders to counteract the techniques. Since the techniques were used regularly the disclosure could have a serious impact on the ability of the authorities to maintain good order in secure training centres. There was, therefore, a strong public interest argument in favour of maintaining the exemption.

However, at the time of the request there was also a serious public debate on the ethics and legality of using such techniques following the death of two young offenders on whom those techniques had been employed.

There was also official recognition that at the time of the request there was no proper framework for assessing the safety of such methods.

The Information Commissioner found that there was a significant public interest in informing the debate on the use of physical control methods on children. He ordered that the

information should be disclosed.

Probity of investigations

105. It is important that the public have confidence in the public authorities responsible for enforcing the law. There is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.
106. It is not uncommon for allegations to be made that an investigation lacked thoroughness or was biased. A mere allegation of lack of probity will not be sufficient to justify attributing weight to this argument. There must be a plausible basis for suspicion of lack of probity, even if it is not actually proven. A plausible basis could be found in the facts and the content of the requested information. Where information would reveal wrongdoing in the conduct of an investigation this would be a strong public interest factor in favour of disclosure. The outcome of any independent investigation or review of probity may be relevant, as may evidence of public concern.

Historical records

107. Section 31 can still be applied to information contained in a historical record. Originally, a historical record was one over 30 years old, or if forming part of a file, the last entry on the file had to be at least 30 years old. However, this has now been amended to 20 years by the Constitutional Reform and Governance Act 2010. This reduction is being phased in gradually over 10 years. In effect, from the end of 2013 the time limit is 29 years. It will reduce by another year every year until it reaches 20 years at the end of 2022.
108. This contrasts with the situation under section 30 which cannot be applied to information in an historical record. This is set out in section 63 of FOIA. This means that information which, for example, had been held as part a criminal investigation but now forms part of a historical record cannot be exempt under section 30. This in turn means that it is no longer excluded from section 31. If the prejudice test can be satisfied, the information could be withheld under section 31(1)(b) – apprehension and detection of crime.

109. However, under section 63(4), information which is contained in a record that is 100 years old cannot be exempt by virtue of section 31. And under section 63(5) confirming or denying whether a record that is over 100 years old is held cannot prejudice any matters referred to in section 31(1).

Other considerations

110. Where the request relates to an investigation the information will very often include personal data. If so, public authorities should consider the application of section 40 – personal information. Where the request targets an investigation into a particular individual it may be appropriate to consider whether confirming or denying that the information is held would itself breach the data protection principles, in which case the exemption provided by section 40(5) may be applicable.
111. Depending on the nature of the law enforcement activity under consideration and the circumstances under which the information was obtained, other exemptions may apply. For example, it is conceivable that information which would prejudice a public authority's functions in respect of securing the health and safety of people at work could also engage section 38 if its disclosure would endanger the safety of any individual. Similarly, the premature disclosure of information relating to plans by HM Treasury to close a tax loophole might engage both section 31(1)(d) – the collection and assessment of tax and section 35 – the formulation and development of policy.
112. This guidance relates only to FOIA. If the information is environmental, public authorities will instead need to consider exceptions under the EIR. The exceptions provided by regulations 12(5)(b) – course of justice, 12(5)(d) confidentiality of proceedings and 12(5)(f) – voluntary supply of information are likely to be of particular relevance.
113. Additional guidance is available and can be accessed on our website from the [guidance index](#) if you need further information on the public interest test, other FOIA exemptions, or the EIR exceptions.
114. The following guidance may be of particular interest:
- Section 30 – Investigations and proceedings,

- Section 40 – Access to information held in complaint files,
- Section 40 – Neither confirm nor deny in relation to personal data
- Section 40 – Requests involving multiple data subjects, one of whom is the requester (section 40 FOIA and Regulations 5(3) and 13 EIR)

More information

115. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.
116. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
117. If you need any more information about this or any other aspect of freedom of information, please [contact us](#): see our website www.ico.org.uk.